

ETIOLOGY IN THE MOSES TRADITION: THE CASE OF EXODUS 18

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In this paper I want to focus attention upon what appears to be an etiology in the Moses tradition for the Israelite system of law courts and the appointment of judges, as found in Exod 18:13–27. We must also give some attention to the related texts of Num 11:16–22, 24–25 and Deut 1:9–18 which have to do with the establishment of an administration on a broader scale.¹ This story of Jethro's visit to Moses has led to speculation about Midianite origins of Israelite religion, the so-called Kenite hypothesis, and other modern "etiologies." These will not concern us here.

From the literary point of view, Exodus 18 appears to be out of place. In chapter 17 the Israelites are at Rephidim, where they fight the Amalekites, and in Exod 19:2 they depart from Rephidim and arrive at the wilderness of Sinai and the mountain of God, but in 18:5 they are already in the wilderness at the mountain. What appears to be a doublet of the visit by Moses' father-in-law occurs in Num 10:29–32, after the revelation at Sinai and the giving of the law and just before their departure for Canaan. This is a much more appropriate location for the establishment of Israel's institution, as we will see, and, I believe, the original location of this unit. It also comes shortly after, and presupposes, the setting up of the tent of meeting (³*ōhel mō'ēd*) in Exod 33:7–11, and immediately before the episode in Num 11 which includes the creation of the council of seventy. The close association of all these texts is important.²

1. An extensive comparative study of these texts was recently made by Rose (1981, pp. 224–63). This also contains a useful review of the literature, but the approach and conclusions are quite different from those presented here.

2. This unit on Jethro was displaced by a later editor (P) in order to substitute a different ending to the story. Instead of Jethro returning to his own home (Exod 18:27), he is persuaded by Moses to accompany the Israelites and thus become the founder of that group of Kenites who show up as inhabiting parts of Israelite-Judean territory (Judg 1:16; 4:11). This displacement has confused the proper understanding of the text of Exod 18.

Exod 18:13–27 has to do with the establishment of the system of courts and judges. However, the account contains a number of problems:

1. In the presentation of Moses' office a number of tasks and functions seem to be confused.

a) Moses acts as a judge to arbitrate disputes between individuals.

b) Moses is the source of divination to whom the people come "to inquire of God," i.e., to seek direction in a personal crisis or on behalf of the people as a whole. This function clearly seems to presuppose the tent of meeting (Exod 33:7–11) which was set up specifically for this purpose.

c) Moses is the lawgiver "to make known the statutes of God and his ordinances." This task seems to presuppose the Sinai revelation of laws.

How can all these functions be reconciled?

2. The second problem has to do with Jethro's advice and Moses' actions. While the roles of diviner and lawgiver are still reserved for Moses, the function of judging is directly addressed by the appointment of leaders (*rāšîm*) who will judge most of the court cases. These leaders are appointed by means of a military scheme as officers of thousands, hundreds, fifties, and tens,³ which hardly seems appropriate for a judicial system. There seems to be some confusion here. How does one account for it?

These problems cannot be solved by source division.⁴ An alternative suggestion is to say that the account represents a complex history of traditions in which a number of different traditions existed on the *oral* level, and that this accounts for the mixture of materials.⁵ But that kind of answer is suspect for two reasons: 1) it always functions as a last resort when all else seems to fail; and 2) it could be used of every problem and is impossible of proof or disproof. So I cannot regard it as helpful in any way.

This same approach of tradition-history has been taken for the unit in Num 11:4–34, where there is a mixture of the quail story and the choosing of the seventy elders. Since these two themes cannot be separated on

On the problem of displacement see also Heinisch (1934, p. 143) and Winnett (1949, pp. 60–61).

3. For a study of this terminology see especially the work by Cazelles (1966, pp. 97–112).

4. This text as a whole is usually identified as belonging to E. For discussion of this source designation see Rose (1981, pp. 224–25, 258). I regard all of the texts in Exod 18; 33:7–11, and Num 11:4–34 as belonging to J. The arguments for this must await a larger study.

5. See Childs (1974a, pp. 322ff.).

the basis of source division,⁶ the explanation offered once again is that of an awkward combination of disparate traditions. When we turn to the usual scholarly analysis of Deut 1:9–18, however, we are told that here Dtr combined elements from these two written accounts but for his own interests eliminated any reference to Jethro, the quail episode, the seventy elders and other minor details in order to produce his own version of the event.⁷

Here we have a serious methodological contradiction. We are asked to believe that the Yahwist or Elohist, faced with different oral traditions, had no choice but to produce a combination of these traditions whose awkwardness is clearly apparent to any reader. Yet the Deuteronomist, when faced with the written traditions of J and E, exercised complete freedom to combine the accounts, eliminate most of the details that did not suit him, and produce a homogeneous narrative with scarcely any trace of such editorial activity. That is too hard for me to swallow!

Let us turn first to the problem of Moses' office. The reference to Moses as a source of divination rests directly upon the unit on the tent of meeting, Exod 33:7–11.⁸ (We noted above that Exod 18 originally followed the unit on the tent of meeting.) Exod 33:7 specifically states that "everyone who inquired of Yahweh" (*bqš*) would go out to the tent of meeting. The tent was thought of as a portable oracular sanctuary and Moses its oracular prophet. But the unit suggests that the tent was also the place where Yahweh met with Moses to deliver His revelation to him for the people. Num 11:4–34 likewise belongs to this same tent of meeting "tradition".⁹ The tent is the place where the divine will is revealed, where Moses intercedes with God, and where appointments and commissions are made.¹⁰

Deuteronomy, by contrast, does not know of a tent of meeting. But Deuteronomy is very clear about the fact that, after the revelation of the ten commandments at Horeb, God met privately with Moses from time to time to give him all the additional statutes and ordinances not included in the ten commandments. Where and how was this encounter with the

6. See Coats (1968, pp. 96ff.); also Noth (1972, p. 128, n. 361) and Rose (1981, pp. 239–40).

7. See especially von Rad (1966, pp. 39–40); also Mayes (1979, pp. 118–19).

8. For recent discussion on the tent of meeting in this text see Fritz (1977, pp. 100–109); also Moberly (1983, pp. 171–77).

9. This is clear enough in the matter of choosing the seventy, vv. 16–17, 24–25; but it also applies to the quail story. In v. 10 we read that the people wept "every man at the door of his tent," the same language that is used in Exod 33:8.

10. Deut 31:14–15, 23 are additions to Deuteronomy that also belong to this set of texts on the tent of meeting.

divine to take place, especially after the people's departure from Sinai/Horeb? I believe that the tent of meeting etiology was specifically invented by a later writer, the Yahwist, to answer that question of location. Thus the function of the tent relates directly to Moses' role of "making known the statutes and the ordinances of God" in Exod 18:16, 20.¹¹

This brings us to the juridical office of Moses and the setting up of the law courts. Here again one must turn for explanation to the parallel text in Deut 1:9–18. Comparisons in the scholarly literature are made invariably on the assumption that D is dependent on Exod 18. But let us consider for a moment the possibility that the dependence is in the opposite direction, i.e., that Deut 1:9–18 is the older text. Note the following points in D:

1. The episode having to do with the appointments occurs just prior to the departure from Horeb (v. 6). This agrees with our remarks which place Exod 18 after Sinai.
2. Moses initiates the action because the people have become too numerous. Nothing is said of Jethro. Furthermore, it is the people who are to choose their own leaders. This is entirely consistent with Deuteronomy, since it anticipates that such choices will have to be made when the people enter the land (cf. Deut 16:18).¹²
3. The appointments are primarily administrative, based upon a military structure. The "heads" (*rāšîm*) who are to govern with Moses are the commanders of thousands, hundreds, fifties, and tens, as well as general administrative officers (*šōṭerîm*).¹³
4. The admonition concerning the judges in Deut 1:16, "And I charged your judges at that time," seems rather abrupt since they have not previously been mentioned in the appointment of offices. So the reason for sharing responsibility does not arise out of the situation of one man having to hear all the cases, as in Exod 18. I think the origin of this charge to the judges lies in Deut 16:18b, where, following the remark in v. 18a about the people's need to appoint both officers (*šōṭerîm*) and judges (*šōpeṭîm*) in Canaan, there is a general admonition about fair judicial practices.
5. The remarks about the difficult cases that Moses is to handle are likewise a summary drawn from Deut 17:8–13, which deals with major

11. Rose (1981, p. 229) points out that this terminology is otherwise associated with Deuteronomistic texts such as Gen 26:5 (also in a J context) and Ps 105:45. See also Exod 15:26.

12. See also Cazelles (1966, p. 103).

13. The reference to *lēšibṭēkem* seems to me to be a carry-over and abbreviation from Deut 16:18, "in all your towns which Yahweh your God is giving to you *according to your tribes*." Obviously the reference to towns would not be appropriate for the wilderness.

legal cases that are beyond the competence of local judges to handle. These must be brought before a central tribunal consisting of priests and a judge. Moses, in Deut 1:17, is then made to correspond to that central authority. But D certainly does not envisage the situation in which Moses begins by having too many cases to try so that he must delegate the minor ones to others, as in Exod 18.

The unit in Deut 1:9–18 can be explained quite adequately as based entirely upon the Deuteronomic Code. The latter is presented as the law given by Moses on the eve of the entrance into Canaan, in order to regulate the life of the people in the promised land. This includes the appointment of administrative officials and judges in the various towns according to the tribes (16:18). Deuteronomy has taken this scheme and moved it back into the wilderness period itself, creating an etiology of these structures at the time of their departure from Horeb. Of course, appointment of officers by towns will not do for the wilderness period, so a military organization for the “camp” is the only alternative. The concluding remark, “and I (Moses) instructed you at that time in everything that you must do,” is certainly intended to suggest that the more detailed instructions concerning the major offenses as outlined in Deut 17:8–13 are to be understood as also inaugurated at that time.

The Yahwist has developed this etiology to yet a further stage by making two separate stories out of the administrative and judicial appointments and originally, as stated earlier, the one account immediately followed the other. The etiology dealing with administrators is given in Num 11, which tells about the council of seventy. While Deuteronomy has Moses complain to the people only in a general way about “their weight, their burden and their strife,” J has created a particular occasion in the people’s craving for meat. This specific situation is then extended into Moses’ generalized complaint to God about the “burden” of the people that he must carry alone. The appointment of the seventy becomes a response to Moses’ complaint, while the response to the people’s complaint is dealt with quite independently.

This is not the place for a detailed study of Num 11. I want here to emphasize only one point. The appointment of the seventy in Num 11:24–25 has nothing to do with primitive ecstatic prophecy.¹⁴ The sign of the spirit, which is given once at the beginning and no more, is simply a recognition that those “registered” for office have divine sanction and stand in the succession of authority of Moses himself.¹⁵ The council of

14. See Noth (1972, p. 129); also von Rad (1965, pp. 8f.), who describes this text as “an etiology of the prophetic movement which gave it legitimation.” Cf. Rose (1981, pp. 243–44) who disputes this interpretation.

15. Perhaps comparable to the notion of prophetic succession in 2 Kings 2.

seventy is understood as a ruling *boulē*, a phenomenon well known throughout the Mediterranean world.¹⁶

In Exod 18, J has taken up the clue from Moses' complaint in Deut 1:12 about all the people's "strife", understood in a legal sense, and has created an episode in which the disputes become too numerous for Moses to handle. At the same time, the suggestion for change and the new institution comes not from Moses but from the visiting father-in-law and so creates a link with a larger context. But now the "heads" of the thousands, hundreds, fifties and tens have all become judges, so that the distinction in Deuteronomy has completely collapsed in a curious manner.¹⁷ In addition, the brief statement in Deut 1:18 about instructing the people in everything that they must do (concerning the courts), has been expanded into a much fuller remark about statutes and laws and their whole general behavior (Exod 18:20).¹⁸

The etiology of the courts in Exod 18:13–27 is not a curious combination of ancient traditions but an expansion, a "midrash", on Deut 1:9–18. The same can be said for the council of seventy in Num 11. What in Deuteronomy is a very simple, bland, homogeneous statement about institutional origins has become, through the Yahwist's ingenuity and use of other themes and motifs, a lively set of episodes. This is the real nature of tradition-history in the Pentateuch.¹⁹

16. Note, e.g., the political structures of Carthage with its council of One Hundred chosen from the senate (elders). See Moscati (1968, pp. 131ff.) and Picard (1969, pp. 141–46). The suggestion by Knierim (1961, pp. 146–71) that Exodus 18 reflects the reform program of Jehoshaphat mentioned in 2 Chr 19:5–11 seems to me most unlikely. This reform is an invention of the Chronicler based on Deuteronomy but also perhaps reflecting political reform movements of the Hellenistic period.

17. This may in fact reflect the situation of the diaspora, in which the military offices have become meaningless.

18. While Rose (1981) also argues that the text of Num 11:16–22, 24–25 is later than Deut 1:9–18, he maintains that Ex 18:13–27 is earlier with some later J additions. I cannot accept his main argument for an early date for Exod 18, which is a hypothetical reconstruction of a very early pre-monarchical office of judge represented by the figure of Moses in this story. Evidence for such an early judgeship does not exist, whereas the evidence for such magistrates in Phoenician-Punic states at a later date is abundant.

19. An objection may be raised at this point. Childs (1974b, pp. 387–97) regards it as inappropriate to use the term etiology in this instance. Genuine etiology, says Childs, involves physical metamorphosis and mythical logic. But such a restrictive use of etiology is quite untenable. Nature etiologies, of course, will involve physical metamorphosis and mythical logic; historical etiologies will involve social metamorphosis which may or may not involve "mythical" logic. And there is often a mixture of the two in which a historical situation is combined with a particular physical (miraculous) change, as in Lot's wife

BIBLIOGRAPHY

- Cazelles, H. 1966. "Institutions et terminologie en Deut. I 6-17." Supplement to *Vetus Testamentum* 15:97-112.
- Childs, B. S. 1974a. *The Book of Exodus: A Critical, Theological Commentary*. Philadelphia.
- . 1974b. "The Etiological Tale Re-examined." *Vetus Testamentum* 24:387-397.
- Coats, G. W. 1968. *Rebellion in the Wilderness*. Nashville.
- Fritz, V. 1977. *Tempel und Zelt*. Neukirchen Vluyn.
- Heinisch, P. 1934. *Das Buch Exodus*. Bonn.
- Knierim, R. 1961. "Exodus 18 und die Neuordnung der mosaischen Gerichtsbarkeit." *Zeitschrift für die alttestamentliche Wissenschaft* 32:146-171.
- Mayes, A. D. H. 1979. *Deuteronomy*. Grand Rapids and London.
- Moberly, R. W. L. 1983. *At the Mountain of God*. Sheffield.
- Moscatti, S. 1968. *The World of the Phoenicians*. London.
- Noth, M. 1972. *A History of Pentateuchal Traditions*. Trans. by B. W. Anderson (The German edition: *Überlieferungsgeschichte des Pentateuch*. 1948). Englewood Cliffs, N.J.
- Pearson, L. 1942. *The Local Historians of Attica*. Philadelphia.
- Picard, G. C. and C. 1969. *The Life and Death of Carthage*. New York.
- Rose, M. 1981. *Deuteronomist und Jahwist*. Zürich.
- von Rad, G. 1965. *Old Testament Theology II*. New York.
- . 1966. *Deuteronomy*. Philadelphia.
- Winnett, F. V. 1949. *The Mosaic Tradition*. Toronto.

changing to a pillar of salt. This whole range of etiology is well represented in classical literature.

Early Greek historians, such as Hellanicus, could include both mythical and historical etiologies in their works. They were especially interested in the origins of cultic, political, and legal institutions. In the last category was Hellanicus' treatment of the establishment of the court of the Areopagus to deal with homicide, for which he gives both mythical and historical precedent. (See Pearson, 1942, pp. 15-17.) It is also the case that such etiologies could be invented on the basis of etymology and other midrashic techniques, exactly as we have seen to be the case in the Yahwist. Etiology in the Yahwist is not primarily a witness to ancient oral tradition behind the Pentateuchal sources. It is evidence of a common technique of ancient historiography.